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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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COMMISSIONERS

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SANDRA D. KENNEDY
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BRENDA BURNS

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

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IN THE MATTER OF:

DOCKET NO. T-01051B-10-0200

GEORGE BEIN-WILLNER for
GLENDALE & 27TH INVESTMENTS, LLC

COMPLAINANT,

v.

**STAFF'S REPLY IN SUPPORT OF STAFF'S
MOTION TO FOREGO PARTICIPATION
IN INFORMAL MEDIATION**

QWEST CORPORATION,

RESPONDENT.

On December 7, 2011, the Utilities Division Staff of the Arizona Corporation Commission ("Staff") requested that the Administrative Law Judge ("ALJ") allow Staff to forego participation in an informal mediation between Glendale & 27th Investments ("Glendale") and Qwest Corporation ("Qwest").

On December 13, 2010, Glendale filed a Response to Staff's Motion to Forego Staff Participation in Informal Mediation ("Response"). Within the Response, Glendale expresses concern that without the informal mediation, it will not be afforded a fair opportunity to protect its entitled rights under the Arizona Administrative Code. Glendale also argues that it has an absolute right to an informal, Staff-facilitated mediation pursuant to R14-2-510(C)(2). Staff disagrees with these assertions.

Rule R14-2-510(C)(2) does not create an entitlement to a Staff-facilitated mediation, and it does not implicate due process rights. Due process is "the conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing *before a tribunal with the power to decide the case.*"¹

¹ Black's Law Dictionary 9th ed. 2009. (*Emphasis Added*).

1 According to the rule at issue here, "the decision of the arbitrator is not binding on any of the parties
2 and the parties will still have the right to make a formal complaint to the Commission." The informal
3 arbitration process as outlined in the rule is conducted by Staff, not by an entity that has authority to
4 enter a binding resolution to decide the case. The due process right for utilities and ratepayers resides
5 in a formal complaint proceeding before an ALJ and the Commission.

6 Rule R14-2-510(C)(2) is not intended to protect or enforce private rights. The purpose is to
7 provide Staff with a process to determine a recommendation of a dispute brought to its attention
8 through an informal complaint and then convey Staff's recommendation to the parties. The rule does
9 not create a procedural right.

10 Additionally, an informal mediation is not required for every informal complaint received, nor
11 is R14-2-510(C)(2) a prerequisite for filing a formal complaint. Staff-facilitated informal mediations
12 are intended to assist in the resolution of disputes prior to a formal complaint being filed. However,
13 Glendale has already filed a formal complaint.

14 The procedure for a formal complaint provides for the parties to be represented by counsel, to
15 engage in discovery, to present evidentiary material and cross examine witnesses and parties at a
16 hearing before an ALJ, and culminates in a binding order of the Commission. Staff believes that the
17 parties should continue with the formal complaint process.

18 Glendale alleges that Staff is somehow biased in this matter.² Staff would like to take this
19 opportunity to assure the parties that it is not biased in this matter, and that it has processed and
20 evaluated the informal complaint in an objective matter. Nonetheless, Staff does not understand what
21 benefit Glendale believes it will derive from utilizing the Staff led informal process, again, if
22 Glendale believes Staff is biased. It would appear to be more desirable for Glendale to pursue its
23 formal complaint before the ALJ.

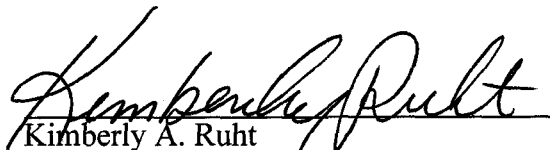
24 Finally, Staff's time and resources are limited. Unfortunately, Staff does not have the time or
25 resources to reevaluate this informal complaint. This does not mean that parties in dispute are left
26 without recourse. Utilities and ratepayers alike have the opportunity to file formal complaints with
27

28 ² Response to Glendale & 27th Investments LLC to Arizona Corporation Commission Staff's Motion to Forego Staff
Participation in Informal Mediation at 2, line 21.5.

1 the Commission and have their case heard before an ALJ and resolved with a binding Order by the
2 Commission

3 In conclusion, Staff requests that it be permitted to forego participation in further informal
4 proceedings beyond what it has already done in this case. However, if the ALJ concludes after
5 consideration of this motion that a Staff-facilitated informal mediation is desired, Staff will proceed
6 as directed.

7 RESPECTFULLY SUBMITTED this 5th day of January 2011.

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11 Kimberly A. Ruht
12 Arizona Corporation Commission
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14 Phoenix, Arizona 85007
15 (602) 542-3402

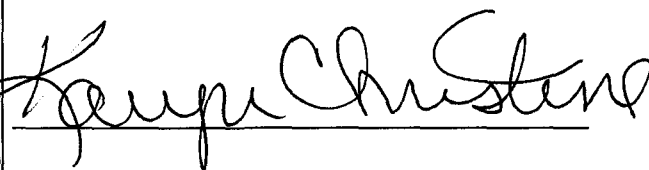
14 Original and thirteen (13) copies
15 of the foregoing filed this 5th day
16 of January 2011 with:

16 Docket Control
17 Arizona Corporation Commission
18 1200 West Washington Street
19 Phoenix, Arizona 85007

19 Copies of the foregoing mailed this
20 5th day of January 2011 to:

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